

## Rural Housing Service, USDA

## § 3575.63

(c) *Modifications.* The lender agrees that once the Conditional Commitment for Guarantee is issued and accepted by the lender and borrower, it will not be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds, or other terms and conditions.

### §§ 3575.60–3575.62 [Reserved]

### § 3575.63 Conditions precedent to issuance of the Loan Note Guarantee.

The Loan Note Guarantee will not be issued until:

(a) The lender certifies that:

(1) No changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment for Guarantee except those approved in the interim by the Agency in writing.

(2) All planned property acquisition has been completed and all development has been substantially completed in accordance with plans, specifications, and applicable building codes. No costs have exceeded the amounts approved by the lender and the Agency.

(3) Required insurance is in effect.

(4) All equal opportunity and Fair Housing Plan requirements have been met.

(5) The loan has been properly closed and the required security instruments have been obtained on any after-acquired property that cannot be covered initially under State statutory provisions.

(6) The borrower has marketable title to the collateral then owned by the borrower, subject to the instrument securing the loan to be guaranteed and subject to any other exceptions approved, in writing, by the Agency.

(7) When required, the entire amount of the loan for working capital has been disbursed except in cases where the Agency has approved disbursement over an extended time.

(8) All other requirements of the Conditional Commitment for Guarantee have been met.

(9) Lien priorities are consistent with requirements of the Conditional Commitment for Guarantee.

(10) The loan proceeds have been disbursed for purposes and in amounts consistent with the Conditional Com-

mitment for Guarantee and as specified on the application for the guaranteed loan. A copy of a detailed statement by the lender detailing the use of loan funds will be attached to support this certification.

(11) There has been no substantive adverse change in the borrower's financial condition nor any other adverse change in the borrower during the period of time from the Agency's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The lender's certification must address all adverse changes of the borrower and the guarantors. For purposes of this paragraph, the term borrower includes any parent, affiliate, or subsidiary of the borrower.

(12) All Federal, State, and local design and construction requirements have been met.

(13) The lender understands and will meet the requirements of the Debt Collection Act (chapter 37 of title 31 of the United States Code).

(14) The lender would not make the loan without an Agency guarantee.

(b) The lender has executed and delivered the Lender's Agreement and closing report for the guaranteed loan along with the appropriate guarantee fee.

(c) The lender has advised the Agency of plans to sell or assign any part of the loan as provided in the Lender's Agreement.

(d) Where applicable, the lender must certify that the borrower has obtained:

(1) A legal opinion relative to the title to rights-of-way and easements. Lenders are responsible for ensuring that borrowers have obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation, and maintenance of a facility.

(2) A title opinion or title insurance showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the lender to ensure that the borrower has obtained and recorded such releases, consents, or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the facility

and to provide the required security. For example, when a site is for major structures for utility-type facilities (such as a gas distribution system) and the lender and borrower are able to obtain only a right-of-way or easement on such a site rather than a fee simple title, such a title opinion must be requested.

(e) For loans exceeding \$150,000, the lender has certified its compliance with the Anti-Lobby Act (18 U.S.C. 1913). Also, if any funds have been, or will be, paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to guarantee a loan, the lender shall completely disclose such lobbying activities in accordance with 31 U.S.C. 1352.

(f) If the Loan Note Guarantee cannot be issued before the Conditional Commitment expires, the lender must submit a written request for an extension of the expiration date. The lender must document and certify to paragraph (a)(1) and (a)(11) of this section specifically identifying any modifications.

(g) Coincident with, or immediately after, loan closing, the lender will contact the Agency and provide those documents and certifications required in this section. For loans to public bodies, lenders may require an opinion from recognized bond counsel regarding the adequacy of the preparation and issuance of the debt instruments. Only when the Agency is satisfied that all conditions for the guarantee have been met will the Loan Note Guarantee be executed.

**§ 3575.64 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement.**

(a) *Lender's Agreement.* If the Agency finds that all requirements have been met, the lender and the Agency will execute the Lender's Agreement. The original will be retained by the Agency and a signed duplicate original will be retained by the lender. A separate Lender's Agreement must be executed

for each loan to be guaranteed by the Agency.

(b) *Loan Note Guarantee.* (1) Upon receipt of the executed Lender's Agreement and after all requirements have been met, the Agency will execute the Loan Note Guarantee. All originals of the Loan Note Guarantee will be provided to the lender and attached to the note.

(2) If the lender has selected the multi-note system, a Loan Note Guarantee will be prepared and attached to each note the borrower issues. All the notes will be listed on the Loan Note Guarantee. Not more than ten notes will be issued for the guaranteed portion (unless the Agency and borrower agree otherwise) and one note issued for the unguaranteed portion.

(c) *Assignment of guarantee.* In the event the lender assigns the guaranteed portion of the loan to a holder, the lender, holder, and Agency will execute an Agency prescribed Assignment Guarantee Agreement.

(d) *Failure to meet conditions.* If the Agency determines that it cannot execute the Loan Note Guarantee because all requirements have not been met, the lender will have a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

(e) *Loan closing report.* The lender will prepare and deliver a guaranteed loan closing report for each loan to be guaranteed and a guarantee fee to the Agency in return for the Loan Note Guarantee.

**§ 3575.65 Lender's sale or assignment of the guaranteed portion of loan.**

The lender may retain all of the guaranteed loan. The lender must not sell or participate any amount of the guaranteed or non-guaranteed portion of the loan to the borrower or to members of the borrower's immediate families, the borrower's officers, directors, stockholders, other owners, or a subsidiary or affiliate. Disposition of the guaranteed portion of a loan may not be made prior to full disbursement, completion of construction, and acquisition of real estate and equipment without the prior written approval of the Agency. If the lender desires to